

## **MEMORANDUM**

**To:** Mayor and City Council

**From:** Michael Smith, Public Works Director

**Date:** April 11, 2016

**Subject:** **Dedication of City Property to the Georgia Department of Transportation**

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### **ITEM DESCRIPTION**

Request for approval to donate city property to the Georgia Department of Transportation for construction of the I-285 and S.R. 400 interchange improvements.

### **BACKGROUND**

When the Perimeter Center Parkway bridge was constructed over I-285 two parcels shown on the attached map were acquired to provide right of way for the project. DeKalb County acquired the properties at a total cost of \$3,168,175 on behalf of the Georgia Department of Transportation (GDOT) using federal funds. When Dunwoody incorporated these parcels were deeded over to the city by the county. No city funds have ever been expended on these parcels.

GDOT has requested donation of a portion of both properties in support of the interchange project. The donation for Parcel 63 (249 Perimeter Center Parkway) consists of 0.143 acres of right of way, 1008.76 square feet of temporary easement and 102.26 linear feet of limited access rights as shown on the attached exhibit. The remainder of Parcel 63 to be retained by the city will consist of approximately 5 acres.

The donation for Parcel 65 (251 Perimeter Center Parkway) consists of 0.979 acres of right of way, 2,389.91 square feet of temporary easement and 244.49 linear feet of limited access rights as shown on the attached exhibit for Parcel 65. The remainder of Parcel 65 to be retained by the city will consist of approximately 0.5 acres.

### **RECOMMENDED ACTION**

The subject properties were originally required for transportation infrastructure purposes and were acquired at no cost to the city. Furthermore, the state's interchange project will benefit Dunwoody. Staff recommends donation of these properties.

**STATE OF GEORGIA  
CITY OF DUNWOODY**

**ORDINANCE 2016-03-28**

**AN ORDINANCE AUTHORIZING THE GRANTING OF RIGHT OF WAY,  
EASEMENT AND RIGHTS OF ACCESS TO THE GEORGIA DEPARTMENT OF  
TRANSPORTATION FOR THE PURPOSE OF CONSTRUCTING AND  
MAINTAINING IMPROVEMENTS ON INTERSTATE 285**

**WHEREAS,** the City owns property at 251 Perimeter Center Parkway referred to and described on the attached documents as Parcels 63 and 65; and

**WHEREAS,** the State of Georgia is planning to make improvements to the I-285 interchange at State Route 400; and

**WHEREAS,** as the State needs additional right of way, easements and rights of access from Parcels 63 and 65 in order to construct and maintain the proposed improvements; and

**WHEREAS,** Parcels 63 and 65 were previously acquired using federal funds for transportation purposes and then subsequently donated to the City; and

**WHEREAS,** the City believes that the interchange improvements will provide transportation benefits to the region.

**NOW, THEREFORE BE IT RESOLVED,** by the Mayor and Council for the City of Dunwoody, that the Mayor, City Manager, and City Attorney are hereby authorized to execute all necessary documents, to affect the granting of the right of way, easements and rights of access as described herein.

**SO RESOLVED AND EFFECTIVE,** this 28<sup>th</sup> day of March, 2016.

Approved:

\_\_\_\_\_  
Denis L. Shortal, Mayor

Approved as to Form and Content

Attest:

\_\_\_\_\_  
Sharon Lowery, City Clerk

(Seal)

\_\_\_\_\_  
City Attorney

**WEINER, YANCEY, DEMPSEY & DIGGS, LLP**  
**1718 Peachtree Street, N.W.**  
**South Tower, Suite 990**  
**Atlanta, Georgia 30309-2409**

STATE OF GEORGIA

COUNTY OF DEKALB

**AFFIDAVIT OF OWNER**

Personally appeared before me, the undersigned attesting authority in and for said State and County, the undersigned Deponent who being duly sworn, deposes and says on oath that the following described property (hereinafter "Property") is owned by **City of Dunwoody, a municipal corporation of the State of Georgia**, (hereinafter "Owner"), to wit:

See Exhibits "A" and "B"

Attached Hereto And By This Reference Incorporated Herein

That Deponent \_\_\_\_\_ is \_\_\_\_\_ of Owner and, as such, Deponent is authorized to make this Affidavit and is personally familiar with the matters set forth herein.

That the Property is also fully described in a Right of Way Deed and Temporary Construction Easement this date executed and delivered to **Department of Transportation** (hereinafter "Purchaser") by Owner or under Owner's due authorization.

That there is no outstanding indebtedness for equipment, appliances, or other fixtures attached to the Property.

That insofar as Deponent is aware, all improvements on the Property are within the boundary lines of the Property and do not encroach on any other land.

That the lines and corners of the Property are clearly marked, and that there are no disputes concerning the location of the lines and corners.

Initials \_\_\_\_\_

That Deponent is not aware of any pending suits, proceedings, judgments, liens, or executions against Owner either in the aforesaid County or any other County in the State of Georgia that would affect title to the Property, except for those items listed on **Exhibit C** attached hereto and by this reference incorporated herein.

That there are no open security deeds.

Initials \_\_\_\_\_

That there are no pending bankruptcies against Owner.

Initials \_\_\_\_\_

That Owner has been in open and peaceful possession of the Property, that Deponent knows of no adverse claims to Owner's claim of title, and that Owner has a perfect right to convey good, fee simple, marketable title to the Property free and clear of any liens or encumbrances.

That no improvements or repairs have been made on the Property during the ninety-five (95) days immediately preceding this date or, if there were any such improvements or repairs made, that the agreed price or reasonable value of all labor, services and materials has been paid to all contractors, subcontractors, suppliers, laborers, materialmen or other person providing such labor, services or materials; that the improvements or repairs have been fully completed in accordance with the terms of the contracts; that there are no contracts pending and not yet completed; and that there are no outstanding debts incurred for labor or materials used in making such improvements or repairs or for services of architects, surveyors, engineers or other person incurred in connection therewith. Deponent acknowledges that these representations regarding such improvements or repairs are made pursuant to the provisions of the Official Code of Georgia Annotated §44-14-361.2.

That Deponent is not aware of unpaid bills or liens against the Property for sewerage, water main, sidewalk or street improvements.

That there are no leases or tenancies on the Property.

Initials \_\_\_\_\_

That there are no retention of title contracts, bills of sale or other encumbrances of record affecting title to any personal property installed on the Property.

That except for DOT Project No. NHS00-0000-00(784), Fulton County, Owner has received no notice of, nor is Owner aware of, any pending, threatened or contemplated action by any governmental authority or agency having the power of eminent domain, which might result in any part of the Property being taken by condemnation or conveyed in lieu thereof.

That Owner has not entered into, nor are there, any agreements or contracts relating to any development, sale or leasing of the Property except to Purchaser.

That Owner has received no notice (oral or written) that any municipality or other governmental or quasi-governmental authority has determined that there are any violations of zoning, health, environmental, or other statutes, ordinances or regulation affecting the Property, and Owner has no knowledge of any such violation. In the event Owner has knowledge of any such violations prior to the closing of the sale of the Property to Purchaser, Owner shall promptly notify Purchaser thereof.

That Owner has no knowledge of the Property having been previously used as a landfill, dump, or storage facility for garbage or refuse.

That Owner has received no notice (oral or written) of the existence of any areas on the Property where "hazardous substances or waste" (as hereinafter defined) have been disposed of, released, or found, and Deponent has no knowledge of the existence of any such areas or of the storage or disposal of any hazardous substances or waste on the Property. For purposes of this Affidavit, the term "hazardous substances or waste" shall mean petroleum (including crude oil or any fraction thereof), petroleum products, asbestos or asbestos products and any substance identified in CERCLA, or any other federal, state or county legislation or ordinances regarding use, storage or disposal of substances which may be termed "hazardous" or "waste."

That Owner is not classed as non-resident alien for purposes of income taxation by the United States of America.

That no broker's services have been engaged with regard to the management, sale, purchase, lease, option, or other conveyance of any interest in the property and that no notice(s) of lien for any such services has been received and no commission, fee, payment, or other compensation is owed to any "broker" (as such term is defined in O.C.G.A. § 43-40-1 for any such services in connection with the Property.

Deponent is aware that this affidavit is made to induce Purchaser to purchase the Property from Owner. Deponent acknowledges that the matters set forth herein pertain to such state of facts as exists on the date this Affidavit is given and prior to the disbursement of any funds on the closing of the sale of the Property to Purchaser.

Sworn to and subscribed before me this  
\_\_\_\_\_ day of \_\_\_\_\_ 2016

\_\_\_\_\_(L.S.)  
Print name: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

[NOTARIAL SEAL]

EXHIBIT "A"

PROJECT NO.:	NHS00-0000-00(784)	Fulton/DeKalb County
P. I. NO.:	0000784	
PARCEL NO.:	63	
DATE OF R/W PLANS:	May 4, 2015	
REVISION DATE:	February 22, 2016	Page 1 of 1

**REQUIRED RIGHT OF WAY**

All that tract or parcel of land lying and being in Land Lot 329 of the 18 Land District and/or N/A Georgia Militia District of DeKalb County, Georgia, being more particularly described as follows:

Beginning at a point 147.76 feet left of and opposite Station 1014+30.17 on the construction centerline of I-285 CL on Georgia Highway Project No. NHS00-0000-00(784) ; running thence N 0°10'10.3" W a distance of 60.86 feet to a point 205.00 feet left of and opposite station 1014+50.87 on said construction centerline laid out for I-285 CL; thence N 69°56'46.1" E a distance of 102.26 feet to a point 205.00 feet left of and opposite station 1015+53.13 on said construction centerline laid out for I-285 CL; thence S 15°13'31.3" E a distance of 56.46 feet to a point 148.74 feet left of and opposite station 1015+48.38 on said construction centerline laid out for I-285 CL; thence S 69°28'18.8" W a distance of 118.21 feet back to the point of beginning.

Said tract contains 0.143 acres, more or less, and is shown colored yellow on the attached plat.

**TEMPORARY CONSTRUCTION EASEMENT**

All that tract or parcel of land lying and being in Land Lot 329 of the 18 Land District and/or N/A Georgia Militia District of DeKalb County, Georgia, being more particularly described as follows:

**ALSO, granted** is the right to execute certain construction over and upon my land abutting on and adjacent to the right of way in such manner as said Department may deem proper to support or accommodate the improvement of said road, including the right to slope the adjacent ground to tie in with the roadway and to construct any required slopes within the easement areas shown colored green on the attached plats. Any slopes constructed will remain in place and the Department of Transportation will cease to maintain said slopes upon expiration of said easement. Said easement is to become effective at the beginning of construction of the above numbered project and will expire upon completion and final acceptance of said project by the Department of Transportation.

Said easement contains 1008.76 square feet.

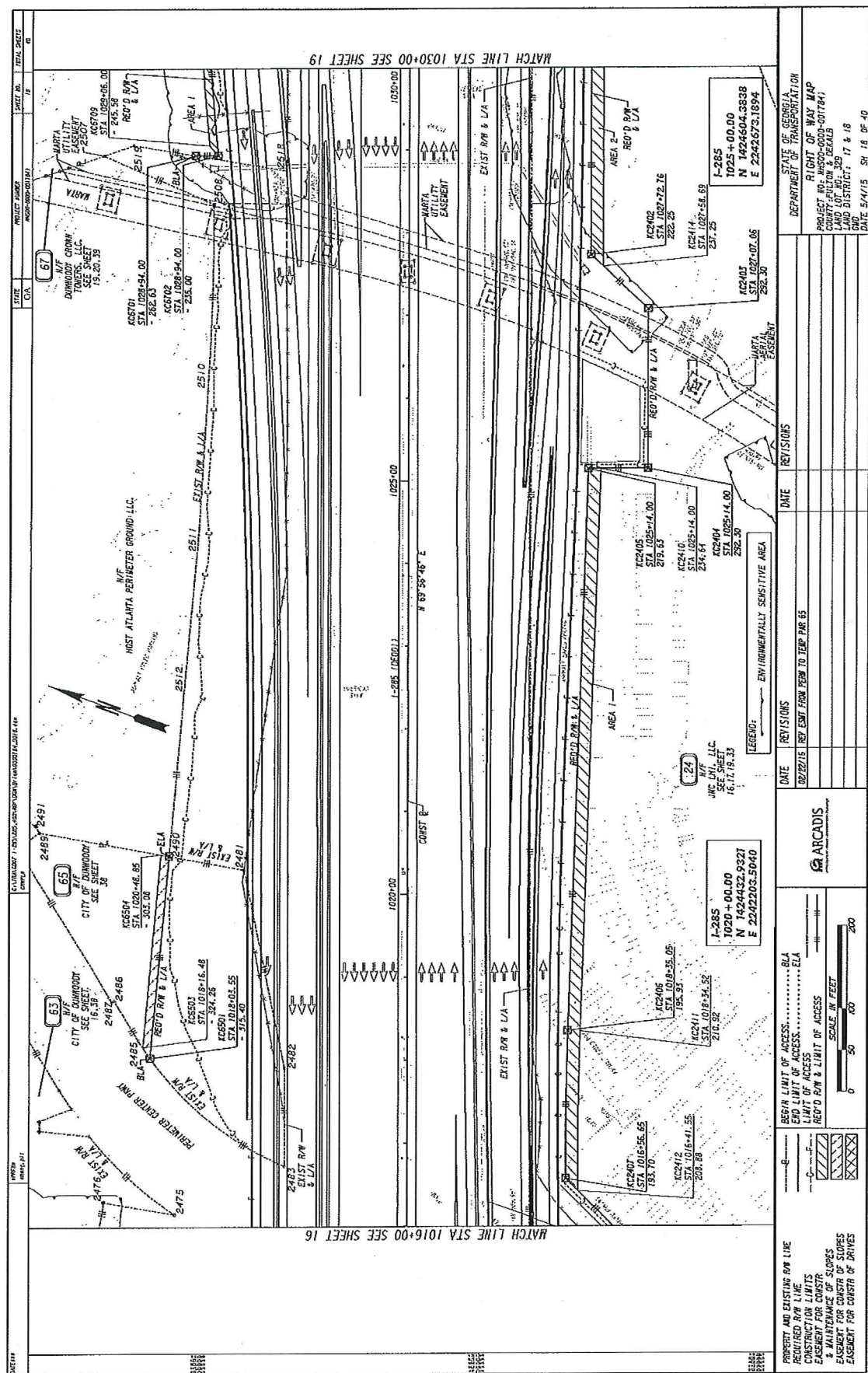
**LIMITED ACCESS RIGHTS**

All that tract or parcel of land lying and being in Land Lot 329 of the 18 Land District and/or N/A Georgia Militia District of DeKalb County, Georgia, being more particularly described as follows:

**Also granted** are 102.26 lineal feet of limited access rights as shown colored red on the attached plat.

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EXHIBIT B P. 3 of 3

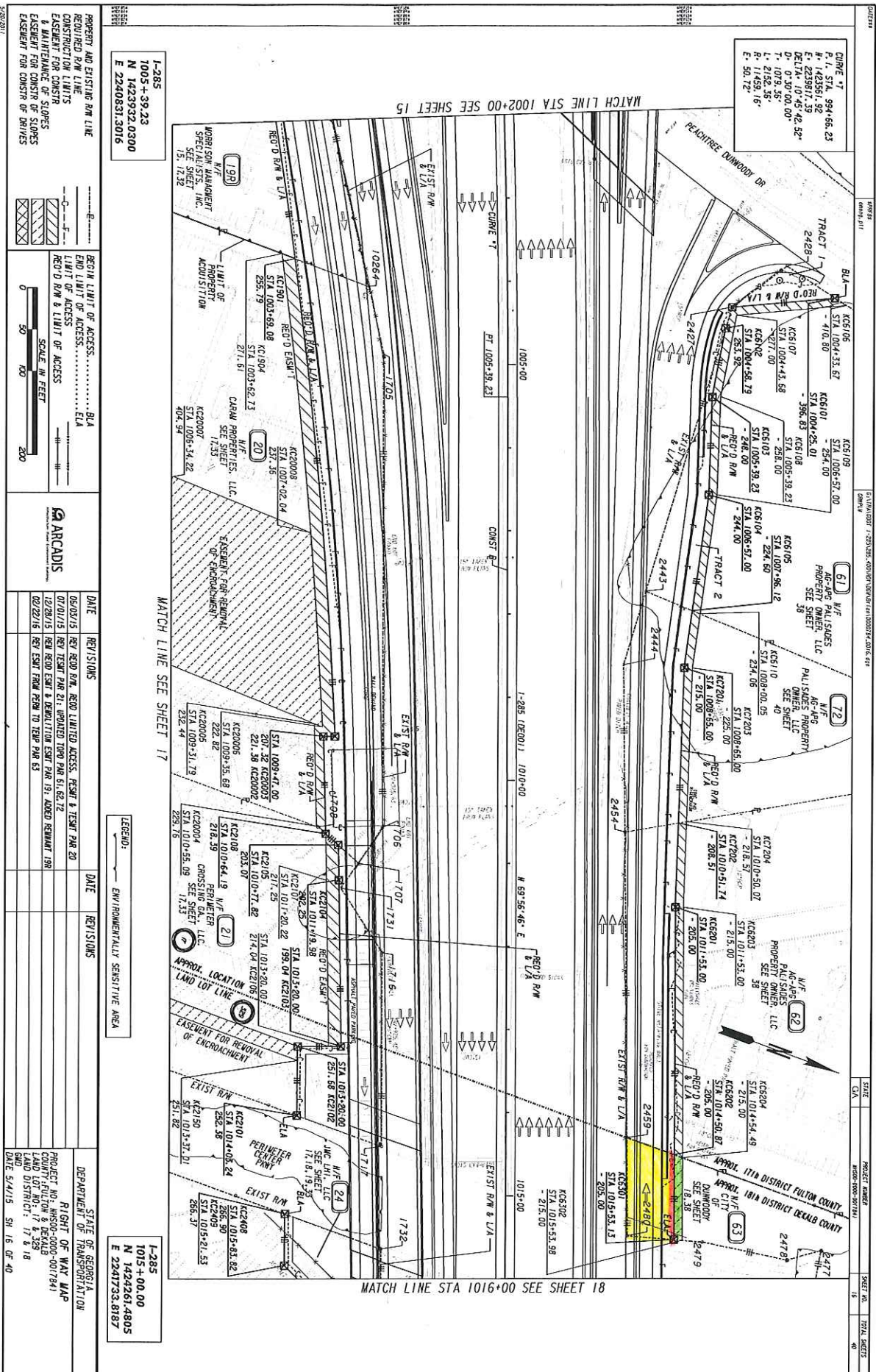
### EXHIBIT C

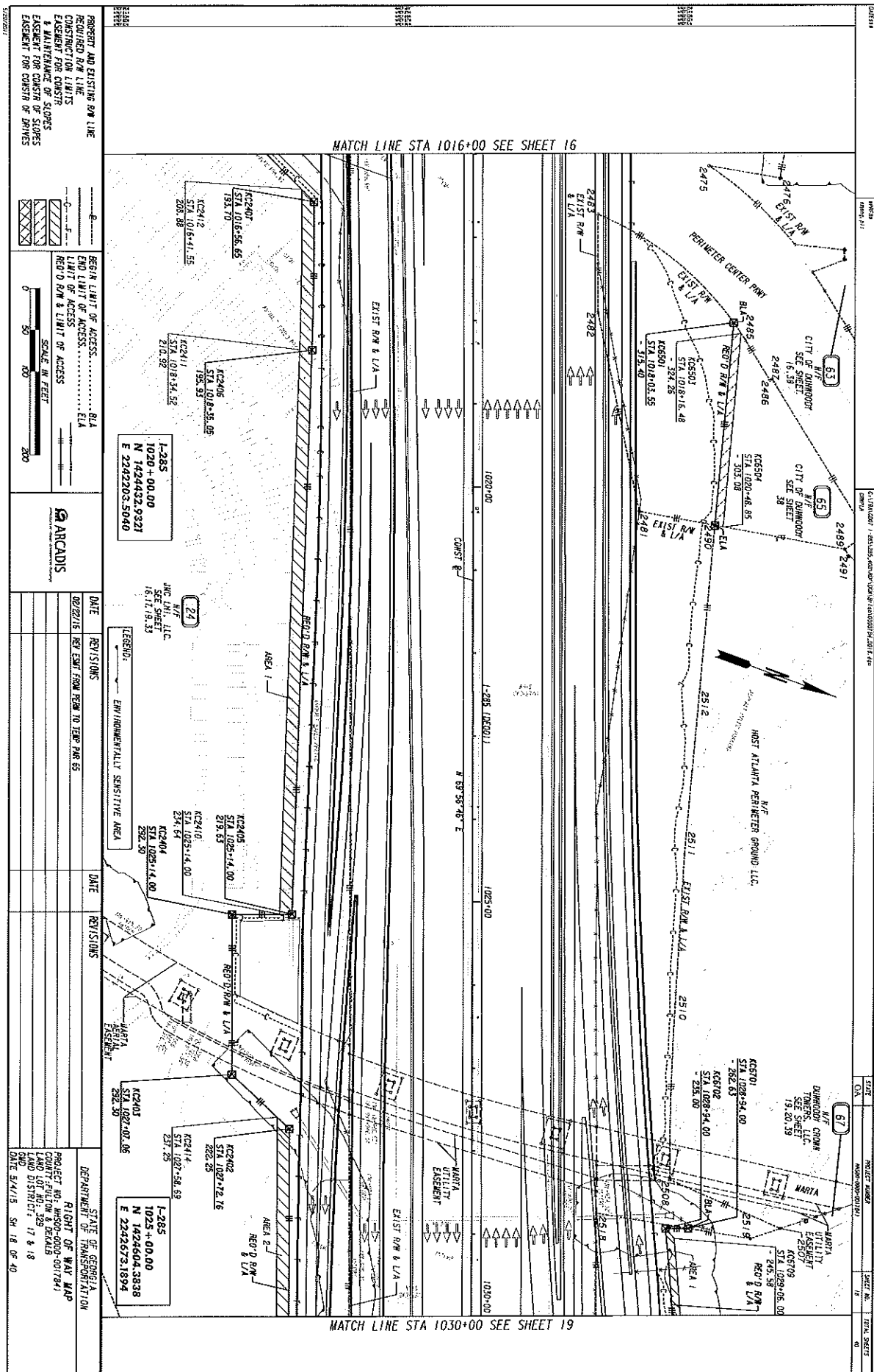
1. Easement from E. L. McCleskey to Georgia Power Company dated December 11, 1956 in Deed Book 1242, Page 395, DeKalb County, Georgia records.
2. Sewer Easement from E. L. McCleskey to DeKalb County, Georgia dated June 24, 1958 in Deed Book 1348, Page 374, DeKalb County, Georgia records.
3. Sanitary Sewer as shown on plat recorded in Deed Book 2541, Page 64, DeKalb County, Georgia records.
4. Sewer Easement from Brunette M. Spruill to DeKalb County, Georgia dated December 3, 1970 and filed December 3, 1970 in Deed Book 2598, Page 120, DeKalb County, Georgia records.
5. Easement from Perimeter Center Associates to Georgia Power Company dated September 4, 1974 and filed October 16, 1974 in Deed Book 3251, Page 504, DeKalb County, Georgia records.
6. Easement from Taylor & Mathis Enterprises et. al., to Georgia Power Company dated May 30, 1975 and filed June 6, 1975 in Deed Book 3342, Page 457, DeKalb County, Georgia records.
7. Easement from Perimeter Center Associates to Georgia Power Company dated January 13, 1978 and filed February 7, 1978 in Deed Book 3746, Page 62, DeKalb County, Georgia records.
8. Easement from Metropolitan Life Insurance Company to Bellsouth Telecommunications, Inc. dated April 12, 1995 and filed May 1, 1995 in Deed Book 8535, Page 144, DeKalb County, Georgia records.
9. Any implied easements for slopes, fills, drainage, maintenance or utilities as contained in the Quitclaim Deed from Metropolitan Life Insurance Company to DeKalb County, Georgia dated June 18, 2004 and filed October 19, 2004 in Deed Book 16716, Page 401, DeKalb County, Georgia records.
10. Any implied easements for slopes, fills, drainage, maintenance or utilities as contained in the Quitclaim Deed from Metropolitan Life Insurance Company to DeKalb County, Georgia dated June 18, 2004 and filed October 19, 2004 in Deed Book 16716, Page 406, DeKalb County, Georgia records.
11. Any implied easements for slopes, fills, drainage, maintenance or utilities as contained in the Quitclaim Deed from Metropolitan Life Insurance Company to DeKalb County, Georgia dated June 18, 2004 and filed October 19, 2004 in Deed Book 16716, Page 411, DeKalb County, Georgia records.

12. Any implied easements for slopes, fills, drainage, maintenance or utilities as contained in the Quitclaim Deed from Metropolitan Life Insurance Company and Taylor & Mathis Enterprises, L. P., to DeKalb County, Georgia dated June 18, 2004 and filed May 6, 2005 in Deed Book 17399, Page 335, DeKalb, Georgia records.
13. Any implied easements for slopes, fills, drainage, maintenance or utilities as contained in the Quitclaim Deed from Metropolitan Life Insurance Company and Taylor & Mathis Enterprises, L. P., to DeKalb County, Georgia dated June 18, 2004 and filed May 6, 2005 in Deed Book 17399, Page 340, DeKalb, Georgia records.
14. Any implied easements for slopes, fills, drainage, maintenance or utilities as contained in the Quitclaim Deed from Metropolitan Life Insurance Company and Taylor & Mathis Enterprises, L. P., to DeKalb County, Georgia dated June 18, 2004 and filed May 6, 2005 in Deed Book 17399, Page 345, DeKalb, Georgia records.
15. Reservation of easement as contained in Quitclaim Deed from DeKalb County, a political subdivision of the State of Georgia to City of Dunwoody, a municipal corporation of the State of Georgia, dated March 14, 2013 and filed June 10, 2013 in Deed Book 23821, Page 215, DeKalb County, Georgia records.

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-38-